

PUBLIC LAW BOARD NO. 4950

NEW JERSEY TRANSIT RAIL OPERATIONS, INC. :
"Carrier" : Case No. 21
: Case No. 22
vs. :
: :
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES : Award No. 1
"Organization" : Award No. 2
: :
: :

STATEMENT OF CASES

- I. Butler - Forfeiture of Seniority
- I. Butler - Dismissal from all Service

OPINION OF THE BOARD

On April 5 and 6, 1989, Claimant allegedly failed to cover his assignment after having been sent first and second warning notices for excessive absenteeism. A hearing concerning this allegation was held on April 20, 1989 on the property. Despite being notified of the hearing by certified mail, Claimant did not appear. Subsequent to the hearing, Carrier discharged Claimant for excessive absenteeism and for being absent without permission. Carrier also contended that by absenting himself from April 10, 1989 until April 23, 1989, without notifying his supervisor, Claimant forfeited all seniority by violating Rule 27 (b), which reads as follows:

Except for sickness or disability, or under circumstances beyond his control, an employee who is absent in excess of fourteen (14) consecutive days without receiving permission from his supervisor will forfeit all seniority under this Agreement. The employee and the General Chairman will be furnished a

letter notifying them of such forfeiture of seniority. The employee or his representative may appeal from such action under Rule 26, Section 3.

The Organization raises a number of procedural and substantive defenses on behalf of the Claimant. The Carrier maintains that Claimant's guilt of the charges has been established and the penalty assessed was appropriate.

The Board has determined that the claim must be denied. At the time of his termination, Claimant was subject to the conditions of a "last chance" reinstatement resulting from an earlier discharge from which the Organization was successful in having the Grievant reinstated. Under the terms of that reinstatement, the Grievant was "subject to a one (1) year probationary period during which any rule infraction would result in an immediate dismissal, without right of appeal." Claimant was also required to undergo certain Employee Assistance Program treatment. Claimant was a signatory to this agreement, and understood its terms. Nonetheless, the record evidence establishes that Claimant failed to cover his assignment on the dates alleged by Carrier. It also appears that Claimant did not follow through on an EAP. As the Board finds no procedural deficiencies in Carrier's handling of this matter on the property which warrants setting aside the discipline assessed, it follows that the claims must be denied.

AWARD

Claims denied.

W. B. Murphy
W. B. Murphy
Carrier Member

W. E. LaRue
W. E. LaRue
Organization Member

S. E. Buchheit
S. E. Buchheit
Neutral Member